28

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1956

No. 637

UNITED LIQUORS CORPORATION, ET AL., *Appellants*

v.

UNITED STATES OF AMERICA

On Appeal from the United States District Court for the Western District of Tennessee, Western Division

MEMORANDUM IN REPLY TO APPELLEE'S MOTION TO AFFIRM

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January 25, 1957

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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On page 9 of the Motion to Affirm filed by the Government in the above entitled case appellee makes the following statement about the provisions of the decree which we assert put appellants under a competitive disadvantage with respect to the largest liquor wholesaler in Memphis:

> "Appellants urge that the injunctive provisions will put them at a competitive disadvantage vis-à-vis Consolidated Distributors, the largest Memphis wholesaler. The asserted competitive disadvantages are purely conjectural, and the court, having retained jurisdiction to modify its judgment (J. St. 24a), can appropriately modify the prohibitions if actual experience demonstrates that they work an undue hardship on appellants."

In reply we wish to point out that the disadvantage can in no way be claimed to be conjectural. The

Government has not denied a single assertion in the affidavits filed by appellants on their motion to stay. Apart from such affidavits we believe that the Court should take judicial notice that inability to talk about prices and thus to advise a retailer on his expected profits for a brand of liquor puts salesmen at a severe competitive disadvantage. So far as the court's modifying the provisions of the decree in this respect we point out that after a full hearing the court refused. Therefore, this issue should be decided by this Court. The only further proof we can produce is the loss of liquor franchise of one of the appellants at which time it will be too late to give him any relief against the competitive hardship imposed on him by the decree.

Respectfully submitted,

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